

AO 257 (Rev. 6/78)

DEFENDANT INFORMATION RELATIVE TO A CRIMINAL ACT IN U.S. DISTRICT COURT

BY: ☐ COMPLAINT ☐ INFORMATION ☒ INDICTMENT
☐ SUPERSEDING

OFFENSE CHARGED

Title 18, U.S.C. § 371 -- Conspiracy; Title 18,
 U.S.C. § 287 -- False claims to the U.S., Title 18
 U.S.C. § 1001(a)(3) -- False statement, Title 18
 U.S.C. § 1516 -- Obstruction of federal audit

☐ Petty
☐ Minor
☐ Misdemeanor
☒ Felony

PENALTY:

Please see attached.

PROCEEDING

Name of Complainant Agency, or Person (& Title, if any)

Department of Health & Human Services

☐ person is awaiting trial in another Federal or State
 Court, give name of court

☐ this person/proceeding is transferred from another
 district per (circle one) FRCrP 20, 21 or 40. Show
 District

☐ this is a reprosecution of
 charges previously dismissed
 which were dismissed on

SHOW
DOCKET NO.

☐ U.S. Att'y ☐ Defense

☐ this prosecution relates to a
 pending case involving this same
 defendant

MAGISTRATE
CASE NO.

☐ prior proceedings or appearance(s)
 before U.S. Magistrate regarding
 this defendant were recorded under

Name and Office of Person
 Furnishing Information on
 THIS FORM

ROBERT S. MUELLER, III

☒ U.S. Att'y ☐ Other U.S. Agency

Name of Asst. U.S. Att'y
 (if assigned)

Maureen C. Bessette, SAUSA

Name of District Court, and/or Judge/Magistrate Location
 NORTHERN DISTRICT OF CALIFORNIA

DEFENDANT - U.S.

St. Luke's Subacute Hospital and Nursing Center

DISTRICT COURT NUMBER

CR

DEFENDANT

IS NOT IN CUSTODY

- 1) ☐ Has not been arrested, pending outcome this proceeding.
 If not detained give date any prior summons
 was served on above charges
- 2) ☐ Is a Fugitive
- 3) ☐ Is on Bail or Release from (show District)

IS IN CUSTODY

- 4) ☐ On this charge
- 5) ☐ On another conviction
- 6) ☐ Awaiting trial on other } ☐ Fed'l ☐ State

If answer to (6) is "Yes", show name of institution

Has detainer
 been filed?

☐ Yes
☐ No

If "Yes"
 give date
 filed

**DATE OF
 ARREST**

Month/Day/Year

Or... if Arresting Agency & Warrant were not

Month/Day/Year

**DATE TRANSFERRED
 TO U.S. CUSTODY**

☐ This report amends AO 257 previously submitted

ADDITIONAL INFORMATION OR COMMENTS**PROCESS:**

☒ SUMMONS ☐ NO PROCESS* ☐ WARRANT Bail Amount: _____

If Summons, complete following:

☐ Arraignment ☐ Initial Appearance

Defendant Address: _____

*Where defendant previously apprehended on complaint, no new summons
 or warrant needed, since Magistrate has scheduled arraignment.

Date/Time: _____

Before Judge: _____

Comments: _____

PENALTIES

Conspiracy, 18 U.S.C. § 371

5 years imprisonment;
\$250,000 fine;
\$100 special assessment for individual/\$400 special assessment for company.

False claims to the United States. 18 U.S.C. § 287

5 years imprisonment;
\$250,000 fine;
\$100 special assessment for individual/\$400 special assessment for company.

False statement, 18 U.S.C. § 1001(a)(3)

5 years imprisonment;
\$250,000 fine;
\$100 special assessment for individual/\$400 special assessment for company.

Obstruction of federal audit, 18 U.S.C. § 1516

5 years imprisonment;
\$250,000 fine;
\$100 special assessment for individual/\$400 special assessment for company.

CR

FILED
01 MAY -8 PM 12:18
RICHARD W. HICKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
~~01-400877~~
02-0044
SBA
MHP

DEFENDANT INFORMATION RELATIVE TO A CRIMINAL ACTION - IN U.S. DISTRICT COURT

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☐ SUPERSEDING

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Name of Complainant Agency, or Person (& Title, if any)

Department of Health & Human Services

☐ person is awaiting trial in another Federal or State Court, give name of court

☐ this person/proceeding is transferred from another district per (circle one) FRCrP 20, 21 or 40. Show District

☐ this is a reprosecution of charges previously dismissed which were dismissed on

☐ U.S. Att'y ☐ Defense

☐ this prosecution relates to a pending case involving this same defendant

☐ prior proceedings or appearance(s) before U.S. Magistrate regarding this defendant were recorded under

SHOW
DOCKET NO.

MAGISTRATE
CASE NO.

Name and Office of Person
Furnishing Information on
THIS FORM

ROBERT S. MUELLER, III

☒ U.S. Att'y ☐ Other U.S. Agency

Name of Asst. U.S. Att'y
(if assigned)

Maureen C. Bessette, SAUSA

Name of District Court, and/or Judge/Magistrate Location
NORTHERN DISTRICT OF CALIFORNIA

DEFENDANT - U.S.

Guy Roland Seaton

DISTRICT COURT NUMBER

CR

~~01 40077~~
02-0044

IS NOT IN CUSTODY

- 1) ☐ Has not been arrested, pending outcome this proceeding. If not detained give date any prior summons was served on above charges
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- 3) ☐ Is on Bail or Release from (show District)

IS IN CUSTODY

- 4) ☐ On this charge
- 5) ☐ On another conviction
- 6) ☐ Awaiting trial on other } ☐ Fed'l ☐ State

If answer to (6) is "Yes", show name of institution

Has detainer been filed? ☐ Yes ☐ No

If "Yes" give date filed

DATE OF
ARREST

Month/Day/Year

Or... if Arresting Agency & Warrant were not

DATE TRANSFERRED
TO U.S. CUSTODY

Month/Day/Year

☐ This report amends AO 257 previously submitted

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☒ SUMMONS ☐ NO PROCESS*

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If Summons, complete following:

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Date/Time: _____

Before Judge: _____

Comments: _____

United States District Court

FOR THE
NORTHERN DISTRICT OF CALIFORNIA
CRIMINAL DIVISION
VENUE: SAN FRANCISCO

FILED
01 MAY -8 PM 12:18
RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

v.

Guy Roland Senter and
St. Luke's Subacute Hospital and Nursing
Centre,

CR 01-40077

02-0044
MHP

DEFENDANT.

INDICTMENT

A true bill.

Frankie Bill

Foreman

Filed in open court this 01st day of

May 2001

James A. M. [Signature]

Clerk

Shirley M. [Signature]

Bail, \$ no money

ROBERT S. MUELLER, III (CSBN 59775)
United States Attorney

FILED
01 MAY -8 PM 12:18
RICHARD D. WIEGMEG
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

~~SBA~~

CR

~~01-400077~~

02-0044 MHP

UNITED STATES OF AMERICA,

Plaintiff,

v.

ST. LUKE'S SUBACUTE HOSPITAL
AND NURSING CENTRE, INC., and
GUY ROLAND SEATON,

Defendants.

No.

VIOLATIONS: 18 U.S.C. § 371 --
Conspiracy; 18 U.S.C. § 287 -- False
Claims; 18 U.S.C. § 1001 -- False
Statements; 18 U.S.C. § 1516 -- Obstruction
of Federal Audit; 18 U.S.C. § 2 -- Aiding
and Abetting

OAKLAND VENUE

INDICTMENT

The Grand Jury charges:

BACKGROUND

I. The Defendants

1. At all times relevant to this indictment, defendant ST. LUKE'S SUBACUTE HOSPITAL AND NURSING CENTRE, INC. ("ST. LUKE'S"), a California corporation located at 15675 Maubert Avenue, San Leandro, California, was a 72 bed nursing home. ST. LUKE'S provides a variety of custodial, nursing, and therapeutic services to patients who, because of their physical conditions, are unable to remain at their homes or in acute care hospitals. ST. LUKE'S is

INDICTMENT

Document No.
11
District Court
Criminal Case Processing

1 compensated for providing these services in a variety of ways, including cash, private insurance,
2 and public insurance, such as the Medicare Program. ST. LUKE'S utilizes Registered Nurses,
3 Licensed Vocational Nurses, and Certified Nurses Aides, among other personnel, in providing
4 custodial, nursing, and therapeutic services to patients. Nurses salaries represent the single most
5 expensive cost of operating ST. LUKE'S.

6 2. Defendant GUY ROLAND SEATON ("SEATON") was the President, Chief Operating
7 Officer and the owner and operator of ST. LUKE'S from 1984 to the present.

8 II. The Medicare Program

9 3. The Medicare Program ("Medicare") was established under the Social Security Act, Title
10 42, United States Code, Section 1395. Medicare is available to patients in need of skilled
11 nursing care who are at least 65 years old, blind or disabled. Eligible patients may receive
12 Medicare benefits for a maximum of 100 days following a three day hospital stay. Medicare is
13 not available or designed for long term care of the elderly or custodial care of the chronically ill.

14 4. Nursing homes may be compensated by Medicare so long as they meet the conditions set
15 out by the U.S. Department of Health & Human Services. Medicare reimburses participating
16 nursing homes for some costs incurred in providing health care services to Medicare patients
17 during the 100 day period, including "nursing service costs". Nursing service costs are based on
18 the salaries of the nurses treating Medicare patients.

19 5. In order to recover nursing service costs, participating nursing homes must demonstrate
20 that they employ a system for recording and accumulating the number of nursing hours. This
21 system must be capable of audit and must equitably allocate nursing service costs between
22 Medicare and non-Medicare patients. Nursing service costs may be allocated on an "actual time
23 basis" or an "average costs per diem basis." Under the "actual time basis" method, nursing
24 service costs are determined based on the actual time spent providing nursing care to Medicare
25 patients. Under the "average costs per diem basis", the total nursing service costs for an entire
26 facility is divided by the total patient days for the facility to determine an average nursing cost
27 per diem. That average is multiplied by the number of days in the Medicare part of the facility
28 ("the distinct part") to determine the nursing service costs that should be reimbursed by

1 Medicare. Typically, nursing homes receive significantly larger Medicare reimbursement when
2 they allocate nursing services under the "actual time basis" method.

3 6. Medicare funds are distributed to participating nursing homes through "fiscal
4 intermediaries", private insurance companies with whom the federal government contracts to
5 administer the Medicare Program. In order to maintain their operations during the year,
6 participating nursing homes bill Medicare for reimbursable costs through the fiscal intermediary.
7 The fiscal intermediary makes payments to the nursing home based on these approximate costs.
8 At the end of the nursing home's fiscal year, interim payments from Medicare are compared to
9 the reimbursable costs reported in an annual cost report which must be submitted to Medicare
10 each year. If the nursing home's reimbursable costs exceed the interim Medicare payments, then
11 it receives the difference from the fiscal intermediary. If the nursing home's costs are less than
12 the total interim payments, then the nursing home pays the difference to the fiscal intermediary.
13 Medicare authorizes fiscal intermediaries to conduct periodic audits to determine whether
14 participating nursing homes are complying with Medicare rules and regulations.

15 7. At all times relevant to this indictment, ST. LUKE'S was a participating nursing home in
16 the Medicare program. The fiscal intermediary for ST. LUKE'S was Mutual of Omaha. ST.
17 LUKE'S represented to Medicare auditors that it allocated Medicare nursing service costs on an
18 actual time basis. In fact, however, ST. LUKE'S did not have a system for recording and
19 accumulating nursing hours spent caring for Medicare patients.

20 THE CONSPIRACY

21 COUNT ONE (18 U.S.C. § 371 -- Conspiracy)

22 8. Paragraphs 1 through 7 are incorporated herein by reference.

23 9. Beginning in or about 1996, and continuing through in or about 2000, within the Northern
24 District of California, and elsewhere, the defendants

25 ST. LUKE'S SUBACUTE HOSPITAL AND NURSING CENTRE, INC. and
26 GUY ROLAND SEATON,

27 together with others known and unknown to the Grand Jury, did knowingly and intentionally
28 conspire to make false statements and to defraud the United States of its right to have the
Medicare Program administered honestly and free from deceit and fraud, and to have federal

1 Medicare Program funds disbursed in accordance with the laws of the United States.

2 METHOD AND MEANS OF THE CONSPIRACY

3 10. It was part of the conspiracy that Defendants and others would and did submit Medicare
4 cost reports to Mutual of Omaha that contained false and fictitious direct nursing service costs,
5 and that misrepresented the level of nursing care provided to Medicare patients.

6 11. It was further part of the conspiracy that Defendants and others would and did fabricate
7 payroll reports and time cards, which purported to support ST. LUKE'S nursing services cost
8 allocation. These false documents designated certain employees as working 100% of their time
9 on Medicare patients, when in fact these employees did not work 100% of their time on Medicare
10 patients.

11 12. It was further part of the conspiracy that Defendants and others would and did fabricate
12 nursing schedules based on the false payroll reports and time cards. The nursing schedules also
13 falsely designated certain employees as working 100% of their time on Medicare patients, when
14 in fact these employees did not work 100% of their time on Medicare patients.

15 13. It was further part of the conspiracy that Defendants and others would and did provide
16 false statements to Mutual of Omaha during a Medicare audit to further support the false nursing
17 schedules.

18 OVERT ACTS

19 14. As part of the conspiracy and to further the objects thereof, the Defendants and others
20 engaged in the following:

21 a. On June 2, 1997, Defendants submitted a cost report for 1996 to Mutual of Omaha
22 falsely claiming \$665,540 in nursing services costs for Medicare patients.

23 b. On June 2, 1998, Defendants submitted a cost report for 1997 to Mutual of Omaha
24 falsely claiming \$662,362 in nursing services costs for Medicare patients.

25 c. On July 1, 1999, Defendants submitted a cost report for 1998 to Mutual of Omaha
26 falsely claiming \$293,441 in nursing services costs for Medicare patients.

27 d. In or about January of 1996 through in or about December of 1999, an employee of
28 ST. LUKE'S created false time cards and payroll reports to support nursing services costs

1 claimed in ST. LUKE'S 1996, 1997, and 1998 cost reports.

2 e. In approximately August of 1999, defendant SEATON directed an employee of
3 ST. LUKE'S to create false nursing logs for the months of April 1996 and February 1997.

4 f. In approximately August of 1999, defendant SEATON directed a ST. LUKE'S
5 employee to create false nursing schedules for the months of April 1996 and February 1997.

6 g. In approximately August of 1999, in preparation for a Medicare audit, ST. LUKE'S
7 employees prepared and presented a binder containing false nursing schedules and logs to
8 Medicare auditors from Mutual of Omaha.

9 h. On or about September 10, 1999, an individual working for ST. LUKE'S and another
10 employed at ST. LUKE'S provided false statements to the Medicare auditors from Mutual of
11 Omaha.

12 i. In September of 1999, an individual working for ST. LUKE'S and another employed at
13 ST. LUKE'S told the Medicare auditors from Mutual of Omaha that the false time cards and the
14 false payroll report supported the false nursing schedules.

15 All in violation of Title 18, United States Code, Section 371.

16
17 COUNTS TWO THROUGH FOUR (18 U.S.C. §§ 287, 2 -- False Claims, Aiding and Abetting)

18 15. Paragraphs 1 through 7 are incorporated herein by reference.

19 16. On or about the dates set forth below, within the Northern District of California, and
20 elsewhere, defendants

21 ST. LUKE'S SUBACUTE HOSPITAL AND NURSING CENTRE, INC. and
22 GUY ROLAND SEATON,

23 did knowingly make and present and did cause to be made and presented to the United States
24 Department of Health and Human Services, Health Care Financing Administration, an agency of
25 the United States, claims, to wit, Medicare cost reports, which claims the defendants knew to be
26 false, fictitious and fraudulent, in that the claimed nursing service costs did not reflect actual
27 nursing service costs for ST. LUKE'S Medicare patients, as follows:

Count	Date	False Claim
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TWO	6/2/97	1996 Cost Report claiming \$665,540 in nursing service costs
THREE	6/2/98	1997 Cost Report claiming \$662,362 in nursing service costs
FOUR	7/1/99	1998 Cost Report claiming \$293,441 in nursing service costs

All in violation of Title 18, United States Code, Sections 287 and 2.

COUNT FIVE (18 U.S.C. §§ 1001, 2 -- False Statements and Aiding and Abetting)

17. Paragraphs 1 through 7 are incorporated herein by reference.

18. In or about and between August and September 1999, both dates being approximate and inclusive, within the Northern District of California, and elsewhere, defendants

ST. LUKE'S SUBACUTE HOSPITAL AND NURSING CENTRE, INC. and
GUY ROLAND SEATON,

in a matter within the jurisdiction of the executive branch of the Government of the United States, to wit, the United States Department of Health and Human Services, Health Care Financing Administration, did knowingly and willfully make a materially false, fictitious and fraudulent statement and representation, that is, that certain nurses worked 100% of their time on Medicare patients, well knowing that such statement and representation was false, fictitious and fraudulent when made, all in violation of Title 18, United States Code, Sections 1001 and 2.

COUNT SIX (18 U.S.C. §§ 1516, 2 -- Obstruction of Federal Audit and Aiding and Abetting)

19. Paragraphs 1 through 7 are incorporated herein by reference.

20. In or about and between August and September 1999, both dates being approximate and inclusive, within the Northern District of California, and elsewhere, defendants

ST. LUKE'S SUBACUTE HOSPITAL AND NURSING CENTRE, INC. and
GUY ROLAND SEATON,

and others known and unknown to the Grand Jury, with intent to defraud and deceive the United States, did endeavor to influence, obstruct and impede federal auditors in the performance of official duties relating to the receipt by ST. LUKE'S of in excess of \$100,000 within a one year period directly from the United States, by not furnishing and refusing to furnish actual nursing schedules, records necessary to assure proper payment by the Medicare program, and to satisfy

1 Medicare program overpayment determinations, all in violation of Title 18, United States Code,
2 Sections 1516 and 2.

3
4 DATED: 5/8/01

A TRUE BILL.

5 Frank B. Bell
6 FOREPERSON

7 ROBERT S. MUELLER, III
8 United States Attorney

9 Leslie R. Caldwell
10 LESLIE R. CALDWELL
Acting Chief, Criminal Division

11 (Approved as to form: James Bessette)

12 SAUSA Bessette
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